

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-5, in the reply filed on 20 October 2009 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Karandinos et al (US 2002/0019507).

The reference to Karandinos et al teaches the production of a polyolefin or polyolefin blend, as recited herein. Note paragraph [0024] that teaches a melting point for the polyolefins. Further note paragraphs [0020] and [0021]. The polyolefins may possess a heat of fusion that may be "less than 75 J/g," thereby overlapping with that recited herein. Note paragraph [0210] for this teaching. The comonomers are shown at paragraph [0021]. The storage modulus and loss coefficient would be expected since there is nothing in the claims as to indicate such a difference, or why there would be a difference. The compositions are identical.

Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterbach et al (US 5,521,625).

The reference teaches the polyolefin having a melting point of "above 125° C" at column 2 (lines 45-55) and a heat of fusion above 1 J/g, at Examples 1, 2 and 3 in Tables 1 and 2 at columns 5-7. The storage modulus and loss coefficient would be expected since there is nothing in the claims as to indicate such a difference, or why there would be a difference. The compositions are identical.

Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogawa et al (JP 2002-302659).

The reference shows the polyolefin having a "heat of crystal fusion ≥ 1 J/g" at the Abstract, and a melting point of "not less than 110° C" at paragraph [0005]. Further, note paragraphs [0007]-[0009]. The storage modulus and loss coefficient would be expected since there is nothing in the claims as to indicate such a difference, or why there would be a difference. The compositions are identical.

Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Morisono et al (JP 2000-191853).

The reference teaches a polyolefin having a heat of fusion "of not smaller than 0.7 J/g" in the Abstract and "in the range of 2.0 or more J/g" at paragraph [0055]. The reference teaches a "molting state with a resin temperature of 100° C - 300°C" at paragraph [0176]. The monomer limitations are taught at paragraph [0104]. The storage modulus and loss coefficient would be expected since there is nothing in the claims as to indicate such a difference, or why there would be a difference. The compositions are identical.

Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. In *re* Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). In *re* Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). In *re* Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/
Primary Examiner, Art Unit 1796

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11 January 2010